IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

MFA.No. 955 of 2000()

OPMV.291/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
.....

APPELLANT/PETITIONER IN MVOP.

K.JAYARAM, S/O.KARTHIKEYA MENON,
KARTHIKEYA NIVAS, ALINCHUVADU,
PADIVATTOM, KOCHI-24.

BY ADV. SRI.P.T.GOVINDAN

RESPONDENTS/RESPONDENTS IN MVOP:
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1. R.BALAKRISHNA, S/O.P.RANGA SWAMY,
16/18, S/O.N. LAYOUT, MILL ROAD,
COIMBATORE.

2. THIRU A.KANAKA SABHA VATHY,
S/O.ARU SWAMY KOVNDAR, COIMBATORE,
52/PKS, LAY OUT, POLLACHI.

3. NEW INDIA ASSURANCE CO. LTD.,
5, RAJA MILL ROAD, POLLACHI.

R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

M.F.A.NO.955 OF 2000

Dated this the 9th day of March, 2007

JUDGMENT

Raman, J.

Appellant is the claimant in O.P.(MV).No.291/95 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. He sustained injuries in a motor accident while travelling on the motor cycle as a pillion rider. The accident occurred as a result of the negligence on the part of the 2nd respondent, who was the driver of the lorry which came from the opposite side and hit against the motor cycle and thereby the appellant, sustained injuries. The Tribunal found that the accident occurred as a result of the negligence on the part of the 2nd respondent-driver. The lst respondent was the owner of the lorry and there is a valid insurance policy with the 3rd respondent. Third respondent is the insurer. Ext.A11 is a certificate of income produced by the petitioner. It shows that the petitioner was drawing a monthly salary of Rs.2,000/-. The Tribunal took only an amount of Rs.1,000/- as his salary. There was no contra evidence in this case. The appellant was aged 29 years at the time of accident. He was working in a Private Limited Company at Edayar. In this case the

petitioner has adduced evidence and produced salary certificate to prove the income. In the absence of any contra evidence, there is no justification in declining Ext.P11. Accordingly, we find that the income of the appellant could have been fixed at Rs.2,000/- as evidenced by Ext.A11 salary certificate. The Tribunal has taken 40% as permanent disability and cogent reasons could have been given as to why 60% as assessed by the by the Medical Board could not be taken. None of the Doctors of the Medical Board is examined. In such circumstances, 40% disability as fixed by the Tribunal does not call for any interference. However, taking the monthly income of the appellant at Rs.2,000/- the appellant will be entitled to Rs.86,400/- over and above the amount already awarded. The appellant has been awarded only an amount of Rs.10,000/- towards pain and suffering. Going by the nature of the injury suffered by the appellant the compensation awarded is considered to be low. We find that a further amount of Rs.10,000/- more can be awarded under this head.

2. In the result, the appellant is entitled for an amount of Rs.96,400/- over and above the compensation already awarded by the

Tribunal. The above amount will carry 7% interest from the date of petition till realisation.

Subject to the above modification, the appeal is allowed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.

P.R.RAMAN &
ANTONY DOMINIC,JJ.

M.F.A.NO.955 OF 2000

JUDGMENT

9TH MARCH, 2007